

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 19]

Educator Effectiveness Rating Tool; Classroom Teachers

The Department of Education (Department) adopts Chapter 19 (relating to educator effectiveness rating tool) to read as set forth in Annex A.

Omission of Proposed Rulemaking

Under section 1123 of the Public School Code of 1949 (act) (24 P.S. § 11-1123), regarding rating systems, amended by the act of June 30, 2012 (P.L. 684, No. 82) (Act 82), the Department is required to develop a rating tool to measure the effectiveness of classroom teachers. Section 1123(b)(2)(i) of the act requires the Department to publish this rating tool in the *Pennsylvania Bulletin* by June 30, 2013.

Under section 1123(j) of the act, the publication of the rating tool by the Department is expressly exempt from sections 201—205 the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)) and the Regulatory Review Act (71 P.S. §§ 745.1—745.12). Therefore, the Department is not required to publish a notice of proposed rulemaking as prescribed by the CDL. The rating tool is exempt from the statutory provisions requiring review by the Office of Attorney General. The publication of the rating tool is not subject to review and approval by the Independent Regulatory Review Commission.

Statutory Authority

This final-omitted rulemaking is published under the authority of section 1123(a), (b)(2), (e) and (j) of the act as amended by Act 82 and sections 201 and 506 of The Administrative Code of 1929 (71 P.S. §§ 61 and 186).

Purpose

This final-omitted rulemaking fulfills the directive of section 1123(b)(2)(i) of the act that the Department “shall develop, issue and publish in the *Pennsylvania Bulletin* a rating tool.” As required under Act 82, the rating tool contains measures based on teacher observation and practice and multiple measures of student performance. The rating tool encompasses a form and instructions. The final-omitted rulemaking also includes a process whereby the governing board of a local education agency (LEA) may submit a plan for an alternative rating tool to the Department for review and approval.

Background and Public Input

Under section 1123(a) of the act, the Department developed the rating tool “in consultation with education experts, parents of school-age children enrolled in a public school, teachers and administrators...” To formally implement this provision, the Department convened a Stakeholders Group. Members of the Stakeholders

Group included parents, teachers, administrators, chief executive officers of charter schools, representatives from higher education and others from across this Commonwealth. The Stakeholders Group met and reviewed key elements of the rating tool and provided the Department with feedback.

Provisions of Final-Omitted Rulemaking

Section 19.1 (relating to classroom teacher effectiveness rating tool) states:

The rating tool functions as a framework for the evaluation and summative process for classroom teachers, and is designed for local education agencies providing early childhood, elementary or secondary education across this Commonwealth. The tool is comprised of the form and instructions.

The rating tool consists of the one-page rating form used by LEAs to record the results of the data collection process which provides for a potential overall rating of Failing, Needs Improvement, Proficient or Distinguished. The rating form sets numeric values for these four rating levels on a zero to three point scale.

The rating tool includes descriptions of the four areas or domains set forth in Act 82 for teacher observation and practice. The four domains are as follows: planning and preparation; classroom environment; instruction; and professional responsibilities. The rating tool provides descriptions of educator performance or behavior at the four different rating levels in the four areas or domains.

The rating tool contains “Instructions for Rating Tool—Standards of Use” that are divided into six areas or main paragraphs. The first area includes the definitions for the rating tool. The second area, “General Provisions,” contains directions for the evaluation and rating process as well as basic instructions for completing the rating form.

The third area, “Standards of Use for Teacher Observation and Practice,” accounts for 50% of a teacher’s total rating. It addresses the evaluation of the four domains listed under “(A) Teacher Observation and Practice” in the form. This area sets forth descriptions of how to develop, combine and calculate the domains into one performance level. LEAs are allowed to use a variety of evidence gathering techniques.

The fourth area is entitled “Standards of Use for Multiple Measures of Student Performance.” Multiple measures represent the other 50% of a teacher’s total rating and are divided into three categories each assigned a percentage factor by Act 82.

The first category is “Building Level Data” and it covers eight different measurements including exam results, graduation and promotion rates, and attendance data. It is 15% of a teacher’s total rating.

The second category, “Teacher Specific Data,” also comprises 15% of a teacher’s final rating. It consists of measures based upon student performance on assessments, value added assessment system data or the Pennsylvania Value-Added Assessment System data, student progress by means of individual education plans and locally developed school district rubrics.

The final area in the rating of classroom teachers is the "Elective Data" measure which may include various options regarding measures of student performance selected from a list provided annually by the Department. LEAs shall select and develop measures using a Student Learning Objective process. This area is 20% of a teacher's total rating.

Section 19.1 also includes provisions addressing record keeping and creation of alternative rating tools.

Affected Parties

Based on data for the 2011-2012 school year, the number of individuals and entities that may be directly affected by the final-omitted rulemaking includes approximately 150,980 professional staff, 1.765 million students, school districts, area vocational-technical schools, career technology centers and intermediate units.

Benefits

The rating tool will provide for a more effective evaluation of teacher performance in schools in this Commonwealth. The potential benefits of the rating tool are significant. It will enable LEAs and the Department to document possible trends in teacher effectiveness. Thereby, local administrators, the Department and State lawmakers will be able to identify teacher improvement programs that are successful and produce solid results in student learning, achievement and growth.

Cost, Paperwork Estimates and Fiscal Impact

The paperwork costs should be minimal. The Department will provide assistance to LEAs in using electronic formats that will reduce paperwork costs and reduce staff time allotted to tracking and filing evaluations.

Additional costs imposed by this final-omitted rulemaking will be minimal. Annual evaluations of teachers and semiannual evaluations of untenured teachers are already a standard function of LEAs across this Commonwealth.

The Department budget for educator effectiveness programs was approximately \$3.7 million in the current fiscal year. This total is projected to be \$1.6 million in 3 years. Therefore, costs will go down as the project proceeds.

Effective Date

This final-omitted rulemaking shall take effect on July 1, 2013. The phase-in for the rating tool will begin in 2013-2014 school year.

Regulatory Review

Under section 1123(j) of the act, this final-omitted rulemaking is exempt from the Regulatory Review Act.

Contact Person and Information

For further information, individuals may contact Deborah E. Wynn, Executive Policy Specialist, Office of Elementary and Secondary Education, Department of Education, 333 Market Street, Fifth Floor, Harrisburg, PA 17126-0333, (717) 783-1024, dewynn@pa.gov. Persons with disabilities may use fax (717) 214-2786 or TTY at (717) 783-8445.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 22 Pa. Code, are amended by adding § 19.1 to read as set forth in Annex A.

(b) The Secretary of Education shall submit this order and Annex A to the Office of General Counsel for review and approval as to legality and form as required by law.

(c) The Secretary of Education shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This final-omitted rulemaking shall take effect on July 1, 2013.

WILLIAM E. HARNER, Ph.D.,
Acting Secretary

Fiscal Note: 6-330. (1) General Fund;

(7) Teacher Professional Development; (2) Implementing Year 2012-13 is \$2,032,000; (3) 1st Succeeding Year 2013-14 is \$2,036,000; 2nd Succeeding Year 2014-15 through 5th Succeeding Year 2017-18 is \$0; (4) 2010-11 Program—\$21,153,000; 2009-10 Program—\$22,750,000; 2008-09 Program—\$39,698,000;

(7) PA Assessment; (2) Implementing Year 2012-13 is \$1,693,000; (3) 1st Succeeding Year 2013-14 through 5th Succeeding Year 2017-18 is \$1,620,000; (4) 2010-11 Program—\$31,981,000; 2009-10 Program—\$37,620,000; 2008-09 Program—\$44,600,000;

(8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 19. EDUCATOR EFFECTIVENESS RATING TOOL

§ 19.1. Classroom teacher effectiveness rating tool.

The rating tool functions as a framework for the evaluation and summative process for classroom teachers, and is designed for local education agencies providing early childhood, elementary or secondary education across this Commonwealth. The tool is comprised of the form and instructions. The following rating form shall be used to record the results of the data collection process.

Commonwealth of Pennsylvania	DEPARTMENT OF EDUCATION	333 Market St., Harrisburg, PA 17126-0333
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CLASSROOM TEACHER RATING FORM

PDE 82-1 (4/13)

Last Name	First	Middle
District/LEA	School	
Rating Date:	Evaluation: (Check one)	<input type="checkbox"/> Semi-annual <input type="checkbox"/> Annual

(A) Teacher Observation and Practice

Domain	Title	*Rating* (A)	Factor (B)	Earned Points (A x B)	Max Points
I.	Planning & Preparation		20%		0.60
II.	Classroom Environment		30%		0.90
III.	Instruction		30%		0.90
IV.	Professional Responsibilities		20%		0.60
(1) Teacher Observation & Practice Rating					3.00

<i>*Domain Rating Assignment* 0 to 3 Point Scale (A)</i>	
Rating	Value
Failing	0
Needs Improvement	1
Proficient	2
Distinguished	3

(B) Student Performance—Building Level Data, Teacher Specific Data, and Elective Data

Building Level Score (0—107)	
(2) Building Level Score Converted to 3 Point Rating	

(3) Teacher Specific Rating	
(4) Elective Rating	

(C) Final Teacher Effectiveness Rating—All Measures

Measure	Rating (C)	Factor (D)	Earned Points (C x D)	Max Points
(1) Teacher Observation & Practice Rating		50%		1.50
(2) Building Level Rating		15%		0.45
(3) Teacher Specific Rating		15%		0.45
(4) Elective Rating		20%		0.60
Total Earned Points				3.00

<i>Conversion to Performance Rating</i>	
Total Earned Points	Rating
0.00-0.49	Failing
0.50-1.49	Needs Improvement
1.50-2.49	Proficient
2.50-3.00	Distinguished
Performance Rating	

☐ Rating: Professional Employee, **OR** ☐ Rating: Temporary Professional Employee

I certify that the above-named employee for the period beginning _____ and ending _____ has received a performance rating of: _____
(month/day/year) (month/day/year)

☐ DISTINGUISHED ☐ PROFICIENT ☐ NEEDS IMPROVEMENT ☐ FAILING

resulting in a FINAL rating of:

☐ SATISFACTORY ☐ UNSATISFACTORY

A performance rating of Distinguished, Proficient or Needs Improvement shall be considered satisfactory, except that the second Needs Improvement rating issued by the same employer within 10 years of the first final rating of Needs Improvement where the employee is in the same certification shall be considered unsatisfactory. A rating of Failing shall be considered unsatisfactory.

Date _____ Designated Rater / Position: _____ Date _____ Chief School Administrator

I acknowledge that I have read the report and that I have been given an opportunity to discuss it with the rater. My signature does not necessarily mean that I agree with the performance evaluation.

Date _____ Signature of Employee

Descriptions of the four domains in Part (A) Teacher Observation and Practice are summarized in Table A.

Table A: Descriptions of Four Domains	
Domain	Description
I. Planning & Preparation 20%	Effective teachers plan and prepare for lessons using their extensive knowledge of the content area, the relationships among different strands within the content and between the subject and other disciplines, and their students' prior understanding of the subject. Instructional outcomes are clear, represent important learning in the subject, and are aligned to the curriculum. The instructional design includes learning activities that are well sequenced and require all students to think, problem solve, inquire, and defend conjectures and opinions. Effective teachers design formative assessments to monitor learning, and they provide the information needed to differentiate instruction. Measures of student learning align with the curriculum, enabling students to demonstrate their understanding in more than one way.
II. Classroom Environment 30%	Effective teachers organize their classrooms so that all students can learn. They maximize instructional time and foster respectful interactions with and among students, ensuring that students find the classroom a safe place to take intellectual risks. Students themselves make a substantive contribution to the effective functioning of the class by assisting with classroom procedures, ensuring effective use of physical space, and supporting the learning of classmates. Students and teachers work in ways that demonstrate their belief that hard work will result in higher levels of learning. Student behavior is consistently appropriate, and the teacher's handling of infractions is subtle, preventive, and respectful of students' dignity.
III. Instruction 30%	In the classrooms of accomplished teachers, all students are highly engaged in learning. They make significant contributions to the success of the class through participation in high-level discussions and active involvement in their learning and the learning of others. Teacher explanations are clear and invite student intellectual engagement. The teacher's feedback is specific to learning goals and rubrics and offers concrete suggestions for improvement. As a result, students understand their progress in learning the content and can explain the learning goals and what they need to do in order to improve. Effective teachers recognize their responsibility for student learning and make adjustments, as needed, to ensure student success.
IV. Professional Responsibilities 20%	Accomplished teachers have high ethical standards and a deep sense of professionalism, focused on improving their own teaching and supporting the ongoing learning of colleagues. Their record-keeping systems are efficient and effective, and they communicate with families clearly, frequently, and with cultural sensitivity. Accomplished teachers assume leadership roles in both school and LEA projects, and they engage in a wide range of professional development activities to strengthen their practice. Reflection on their own teaching results in ideas for improvement that are shared across professional learning communities and contribute to improving the practice of all.

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Table B summarizes teacher performance levels for each of the Domain Rating Assignments and for the ratings to be assigned for each domain in the Rating (A) column.

Table B: Four Levels of Performance in Four Domains				
Domain	Failing	Needs Improvement	Proficient	Distinguished
I. Planning & Preparation 20%	Teacher's plans reflect little understanding of the content, the students, and available resources. Instructional outcomes are either lacking or inappropriate; assessment methodologies are inadequate.	Teacher's plans reflect moderate understanding of the content, the students, and available resources. Some instructional outcomes are suitable to the students as a group, and the approaches to assessment are partially aligned with the goals.	Teacher's plans reflect solid understanding of the content, the students, and available resources. Instructional outcomes represent important learning suitable to most students. Most elements of the instructional design, including the assessments, are aligned to the goals.	Teacher's plans, based on extensive content knowledge and understanding of students, are designed to engage students in significant learning. All aspects of the teacher's plans—instructional outcomes, learning activities, materials, resources, and assessments—are in complete alignment and are adapted as needed for individual students.

Table B: Four Levels of Performance in Four Domains				
Domain	Failing	Needs Improvement	Proficient	Distinguished
II. Classroom Environment 30%	Classroom environment is characterized by chaos and conflict, with low expectations for learning, no clear standards of student conduct, poor use of physical space, and negative interactions between individuals.	Classroom environment functions somewhat effectively, with modest expectations for student learning and conduct, and classroom routines and use of space that partially support student learning. Students and the teacher rarely treat one another with disrespect.	Classroom environment functions smoothly, with little or no loss of instructional time. Expectations for student learning are high, and interactions among individuals are respectful. Standards for student conduct are clear, and the physical environment supports learning.	Students themselves make a substantive contribution to the smooth functioning of the classroom, with highly positive personal interactions, high expectations and student pride in work, seamless routines, clear standards of conduct, and a physical environment conducive to high-level learning.
III. Instruction 30%	Instruction is characterized by poor communication, low-level questions, little student engagement or participation in discussion, little or no use of assessment in learning, and rigid adherence to an instructional plan despite evidence that it should be revised or modified.	Only some students are engaged in learning because of only partially clear communication, uneven use of discussion strategies, and only some suitable instructional activities and materials. The teacher displays some use of assessment in instruction and is moderately flexible in adjusting the instructional plan and in response to students' interests and their success in learning.	All students are engaged in learning as a result of clear communication and successful use of questioning and discussion techniques. Activities and assignments are of high quality, and teacher and students make productive use of assessment. The teacher demonstrates flexibility in contributing to the success of the lesson and of each student.	All students are highly engaged in learning and make material contributions to the success of the class through their participation in discussions, active involvement in learning activities, and use of assessment information in their learning. The teacher persists in the search for approaches to meet the needs of every student.
IV. Professional Responsibilities 20%	The teacher demonstrates low ethical standards and levels of professionalism, with poor recordkeeping systems and skill in reflection, little or no communication with families or colleagues, and avoidance of school and LEA responsibilities and participation in activities for professional growth.	The teacher demonstrates moderate ethical standards and levels of professionalism, with rudimentary recordkeeping systems and skills in reflection, modest communication with families or colleagues, and compliance with expectations regarding participation in school and LEA projects and activities for professional growth.	The teacher demonstrates high ethical standards and a genuine sense of professionalism by engaging in accurate reflection on instruction, maintaining accurate records, communicating frequently with families, actively participating in school and LEA events, and engaging in activities for professional development.	The teacher's ethical standards and sense of professionalism are highly developed, showing perceptive use of reflection, effective systems for recordkeeping and communication with families, leadership roles in both school and LEA projects, and extensive professional development activities. Where appropriate, students contribute to the systems for recordkeeping and family communication.

From *Enhancing Professional Practice: A Framework for Teachers, 2nd Edition* (pp. 41-42), by Charlotte Danielson, Alexandria, VA: ASCD. © 2007 by ASCD. Adapted and reproduced with permission.

INSTRUCTIONS FOR RATING TOOL—STANDARDS OF USE

The rating form and related documents are available at the Department's website in electronic versions and Excel worksheet format for scoring and rating tabulation.

(I.) Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

Assessment—The term shall mean the Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor statute or required to achieve other standards established by the Department for the school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

Chief School Administrator—An individual who is employed as a school district superintendent, an executive director of an intermediate unit or a chief school administrator of an area vocational-technical school or career technology centers.

Classroom Teacher—A professional or temporary professional employee who provides direct instruction to students related to a specific subject or grade level and usually holds one of the following:

Instructional I Certificate (see § 49.82),

Instructional II Certificate (see § 49.83),

Vocational Instructional I Certificate (see § 49.142), and

Vocational Instructional II Certificate (see § 49.143).

Department—The Department of Education of the Commonwealth.

Distinguished—The employee's performance consistently reflects teaching at the highest level of practice.

District-designed measures and examinations, and locally developed school district rubrics—A measure of student performance created or selected by an LEA. The development or design of the measure shall be documented via a Student Learning Objective.

Education Specialist—A person who holds an educational specialist certificate issued by the Commonwealth, including a certificate endorsed in the area of elementary school counselor, secondary school counselor, social restoration, school nurse, home and school visitor, school psychologist, dental hygienist, instructional technology specialist or nutrition service specialist.

Employee—A person who is a professional employee or temporary professional employee.

Failing—The employee does not meet performance expectations required for the position.

Keystone Exam—An assessment developed or caused to be developed by the Department pursuant to 22 Pa. Code § 4.51 (relating to state assessment system).

LEA—A local education agency, including a public school district, area vocational-technical school, career technology center and intermediate unit, which is required to use a rating tool established pursuant to section 1123 of the Public School Code (24 P. S. § 11-1123).

Needs Improvement—The employee is functioning below proficient for performance expectations required for continued employment.

Nonteaching Professional Employee—A person who is an education specialist or a professional employee or temporary professional employee who provides services other than classroom instruction.

Performance Improvement Plan—A plan, designed by an LEA with input of the employee, that may include mentoring, coaching, recommendations for professional development and intensive supervision based on the results of the rating provided for under this chapter.

Principal—A building principal, an assistant principal, a vice principal or a director of vocational education.

Professional Employee—An individual who is certified as a teacher, supervisor, principal, assistant principal, vice-principal, director of vocational education, dental hygienist, visiting teacher, home and school visitor, school counselor, child nutrition program specialist, school nurse, or school librarian.

Proficient—The employee's performance consistently reflects practice at a professional level.

PSSA—The Pennsylvania System of School Assessment established in 22 Pa. Code § 4.51 (relating to state assessment system).

PVAAS—The Pennsylvania Value-Added Assessment System established in compliance with 22 Pa. Code § 403.3 (relating to single accountability system) and its data made available by the Department under Section 221 of the Public School Code (24 P. S. § 2-221).

SLO—The Student Learning Objective is a record of the development and application of student performance measures selected by an LEA. It documents the process used to determine a student performance measure and validate its assigned weight. This record will provide for quality assurance in rating a student performance measure on the zero-to-three-point rating scale.

Temporary Professional Employee—An individual who has been employed to perform for a limited time the duties of a newly created position or of a regular professional employee whose service has been terminated by death, resignation, suspension or removal.

(II.) General Provisions.

1. The rating of an employee shall be performed by or under the supervision of the chief school administrator, or, if so directed by the chief school administrator, by an assistant administrator, a supervisor or a principal, who has supervision over the work of the professional employee or temporary professional employee being rated, provided that no unsatisfactory rating shall be valid unless approved by the chief school administrator. (24 P. S. § 11-1123(h)(3))

2. The rating form shall be marked to indicate whether the employee is a professional employee or temporary professional employee.

3. A temporary professional employee must be notified as to the quality of service at least twice a year. (24 P. S. § 11-1108)

4. The rating form includes four measures or rated areas: Teacher Observation and Practice, Building Level, Teacher Specific, and Elective. Application of each measure is dependent on the availability of data. A rating in the range of zero to three based on the "0 to 3 Point Scale" must be given to each of the four rating areas.

5. Teacher Observation and Practice is divided into four domains: I. Planning and Preparation; II. Classroom Environment; III. Instruction; and IV. Professional Responsibilities. For each domain, an employee must be given a rating of zero, one, two or three which is based on classroom observation, practice models, evidence or documented artifacts.

6. The Building Level Score will be provided by the Department or its designee, and published annually on the Department's website.

7. The Teacher Specific Rating will include statewide assessments and value-added assessment system data if and when such data is available.

8. Data, ratings and weights assigned to measures for locally developed school district rubrics, progress in meeting the goals of student individualized education plans, and the Elective Rating must be recorded by a process provided by the Department.

9. Each of the four measures in Final Teacher Effectiveness Rating shall be rated on the zero-to-three-point scale. Each number in Rating (C) shall be multiplied by the Factor (D) and the sum of the Earned Points or Total Earned Points shall be converted into a Performance Rating using the table marked Conversion to Performance Rating.

10. An overall performance rating of Distinguished or Proficient shall be considered satisfactory.

11. An initial overall performance rating of Needs Improvement shall be considered satisfactory.

12. The second overall performance rating of Needs Improvement issued by the same employer within 10 years of the first rating of Needs Improvement where the employee is in the same certification shall be considered unsatisfactory.

13. For professional employees, two consecutive overall unsatisfactory ratings, which include classroom observations, and are not less than four months apart, shall be considered grounds for dismissal.

14. No temporary professional employee shall be dismissed unless rated unsatisfactory, and notification, in writing, of such unsatisfactory rating shall have been furnished the employee within 10 days following the date of such rating.

15. An employee who receives an overall performance rating of Needs Improvement or Failing must participate in a performance improvement plan. No employee will be rated Needs Improvement or Failing based solely on student test scores.

16. The rating form shall be marked to indicate the appropriate performance rating and whether the overall final rating is satisfactory or unsatisfactory.

17. The rating form must be signed by the chief school administrator or by a designated rater, who is an assistant administrator, supervisor or principal, has supervision over the work of the professional employee or temporary professional employee being rated, and is directed by the chief school administrator to perform the rating.

18. A final rating of unsatisfactory will not be valid unless signed by the chief school administrator.

19. A signed copy of the rating form shall be provided to the employee.

20. The rating tool is not intended to establish mandates or requirements for the formative process of supervising classroom teachers.

21. This rating form, section or chapter may not be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(III.) Standards of Use for Teacher Observation and Practice.

Part (A) "Teacher Observation and Practice" in the rating form shall be completed using the following standards, calculations and procedures.

(a) *Teacher observation and practice domains.* The rating of a classroom teacher for effectiveness in teacher practice shall be based on classroom observation or other supervisory methods. Teacher practice shall comprise 50% of the Final Teacher Effectiveness Rating of the employee. The percentage factor for each domain is listed in Table C:

Table C: Four Domains	
Domains	% of 50% allotment
I. Planning and preparation.	20.0
II. Classroom environment.	30.0
III. Instruction.	30.0
IV. Professional responsibilities.	20.0

(b) *Summative process of evaluation.* LEAs shall utilize classroom practice models (e.g., Danielson, *Enhancing Professional Practice: A Framework for Teaching*) that address the areas related to classroom observation and practice contained in section 1123(1)(i) of the Public School Code (24 P.S. § 11-1123(1)(i)) and are approved by the Department. The Department shall publish a list of approved practice models for assessing the four domains annually on the Department's website. A classroom teacher must be given a rating in each of the four domains. In determining a rating for an employee, an LEA may use any portion or combination of the practice models related to the domains. The four domains and classroom practice models establish a framework for the summative process of evaluating classroom teachers. The form and standards do not impose mandates on the supervisory and formative processes utilized by an LEA.

(c) *Evidentiary sources.* Teacher observation and practice evaluation results and ratings shall be based on evidence. Information, including dates and times, if applicable, on the source of the evidence shall be noted in the employee's record. As appropriate for the employee and their placement in a classroom and educational program, records may include, but not be limited to, any combination of the following items:

(1) Notations of classroom observations, teacher/rater conferences or interviews, or informal observations or visits, including dates for observations, interviews and conferences.

(2) Lesson unit plans (types, titles and numbers), materials, technology, teacher resource documents, visual technology, utilization of space, student assignment sheets,

student work, instructional resources, student records, grade book, progress reports and report cards.

- (3) Interaction with students' family members.
- (4) Family, parent, school and community feedback.
- (5) Act 48 documentation.
- (6) Use of teaching and learning reflections.
- (7) Examination of sources of evidence provided by the teacher.

The documentation, evidence and findings of the rater shall provide a basis for the rating of the employee in the domains of teacher observation and practice.

(d) *Scoring.* An LEA must provide a rating score in each domain. The four teacher observation and practice domains shall be rated and scored on a zero-to-three-point scale. The ratings of Failing, Needs Improvement, Proficient and Distinguished are given numeric values as shown in Table D.

Table D: Domain Rating Assignment— 3 Point Scale	
<i>Performance Rating</i>	<i>Value</i>
Failing	0
Needs Improvement	1
Proficient	2
Distinguished	3

(e) *Ratings and weighted scoring.* The four domains of teacher observation and practice in Part (A) of the form are each assigned a percentage factor. Each domain shall be scored on the “0-to-3-point scale.” The individual score or rating for each domain is adjusted by the percentage factor attributed to that domain. The score of zero, one, two or three for each domain is calculated into points based on its percentage factor. The sum of the points for all domains will be the total Teacher Observation and Practice Rating. The calculation for each domain is set forth in Table E.

Table E: Teacher Observation and Practice Rating					
<i>Domain</i>	<i>Title</i>	<i>Rating (A)</i>	<i>Factor (B)</i>	<i>Earned Points (A x B)</i>	<i>Max Points</i>
I.	Planning & Preparation		20%		0.60
II.	Classroom Environment		30%		0.90
III.	Instruction		30%		0.90
IV.	Professional Responsibilities		20%		0.60
<i>Teacher Observation & Practice Points/Rating</i>					3.00

(f) *Administrative action based on available data.* Nothing in these standards of use for teacher observation and practice, this section or this chapter shall be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(IV.) Standards of Use for Multiple Measures of Student Performance.

Student Performance is comprised of Building Level, Teacher Specific and Elective data. In total, these three measures are 50% of the Final Teacher Effectiveness Rating for a classroom teacher. Each area has a prescribed percentage factor of the performance rating as described in Table F.

Table F: Multiple Measure Rating Areas and Percentage Factors of Performance Rating	
<i>Multiple Measure Rating Area</i>	<i>Factor</i>
Building Level Rating	15%
Teacher Specific Rating	15%
Elective Rating	20%

(a) *Building level data.*

(1) For the purposes of Paragraph (IV) relating to Standards of Use for Multiple Measures of Student

Performance, the term “building” shall mean a school or configuration of grades that is assigned a unique four-digit identification number by the Department unless the context clearly indicates otherwise.

(2) This area comprises 15% of the Final Teacher Effectiveness Rating. Building level data shall include, but is not limited to, the following when data is available and applicable to a building where the educator provides service:

(i) Student performance on assessments.

(ii) Value-added assessment system data made available by the Department under section 221 of the Public School Code (24 P. S. § 2-221).

(iii) Graduation rate as reported to the Department under section 222 of the Public School Code (24 P. S. § 2-222).

(iv) Promotion rate.

(v) Attendance rate as reported to the Department under section 2512 of the Public School Code (24 P. S. § 25-2512).

(vi) Industry certification examinations data.

(vii) Advanced placement course participation.

(viii) Scholastic aptitude test and preliminary scholastic aptitude test data.

(3) The Department or its designee will provide the Building Level Score for each building within an LEA based on available data. LEA building data will be

published annually on the Department's website. An explanation of the calculation of the building level data and the weight given to each measure utilized for a specific building will be published annually on the Department's website. The Department may add to the list of measures for building level data set forth in Paragraph (IV)(a)(2). Notice of these changes will be published on the Department's website.

(4) Each LEA shall utilize the conversions in Table G below to calculate the Building Level Rating for each building with eligible building level data.

Table G: Conversion from 100 Point Scale to 0—3 Scale for Building Level Rating	
<i>Building Level Score</i>	<i>0—3 Rating Scale*</i>
90.0 to 107	2.50—3.00
70.0 to 89.9	1.50—2.49
60.0 to 69.9	0.50—1.49
00.0 to 59.9	0.00—0.49

*The Department will publish the full conversion table on its website.

LEAs shall add the Building Level Rating to (B)(2) and (C)(2) of the Rating Form.

(5) For classroom teachers in positions for which there is no Building Level Score reported on the Department website, the LEA shall utilize the rating from the teacher observation and practice portion of the rating form in Part (A)(1) in place of the Building Level Rating.

(b) *Teacher specific data.*

(1) Teacher specific data shall comprise 15% of the Final Teacher Effectiveness Rating. Teacher specific data shall include, but is not limited to, the following when data is available and applicable to a specific classroom teacher:

(i) Student performance on assessments.

(ii) Value-added assessment system data made available by the Department under section 221 (24 P.S. § 2-221).

(iii) Progress in meeting the goals of student individualized education plans required under the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.).

(iv) Locally developed school district rubrics.

Any data used for a rating must be attributable to the specific classroom teacher who is being evaluated and rated.

(2) The following provisions in this subparagraph apply to teacher specific measures based on assessments and value-added assessment system data (Paragraphs (IV)(b)(1)(i) and (ii)).

(i) The portion of the Teacher Specific Rating related to assessments (Paragraph (IV)(b)(1)(i)) shall be calculated annually for a classroom teacher with available assessment data based upon a percentage of students who score proficient or advanced on the assessments. The Department or its designee will provide the performance level results for each student to the LEA. The LEA shall utilize the conversions in Table H below to rate the classroom teacher's rating on a zero to three scale.

Table H: Conversion from % Scale to 0—3 Scale for Assessments Rating	
<i>% Students at Proficient or Advanced</i>	<i>0—3 Rating Scale</i>
95—100%	3.0
90—94.9%	2.5
80—89.9%	2.0
70—79.9%	1.5
65—69.9%	1.0
60—64.9%	0.5
Below 60%	0.0

(ii) Any score based upon student performance on assessments (Paragraph (IV)(b)(1)(i)) for a classroom teacher with available assessment data shall comprise not more than 5% of the classroom teacher's Final Teacher Effectiveness Rating.

(iii) For the purposes of this section, the portion of the Teacher Specific Rating related to value-added assessment system data made available by the Department under section 221 of the Public School Code (24 P.S. § 2-221) (Paragraph (IV)(b)(1)(ii)) shall be known as PVAAS data.

(iv) Any PVAAS data score attributable to a classroom teacher shall be based on a rolling average of available assessment data during the most recent three consecutive school years.

(v) The Department or its designee will provide the initial 3 year average PVAAS data score to LEAs based on PVAAS data from school years 2013-2014, 2014-2015 and 2015-2016, and will provide the PVAAS rating every year thereafter for classroom teachers with three consecutive school years of PVAAS rating data.

(vi) Each LEA shall use the PVAAS data score provided by the Department or its designee and the conversions in Table I below to calculate a classroom teacher's rating on the zero to three rating scale.

Table I: Conversion from 100 Points Scale to 0—3 Scale for PVAAS Rating	
<i>PVAAS Score</i>	<i>0—3 Scale*</i>
90.0 to 100	2.50—3.00
70.0 to 89.9	1.50—2.49
60.0 to 69.9	0.50—1.49
00.0 to 59.9	0.00—0.49

*The Department will publish the full conversion table on its website.

(vii) A score based upon available PVAAS data shall comprise not less than 10% of the classroom teacher's Final Teacher Effectiveness Rating.

(viii) The Department or its designee will annually publish on the Department's website an explanation for the PVAAS data based on the value-added assessment system data (Paragraph (IV)(b)(1)(ii)).

(ix) Whenever PVAAS data is unavailable for evaluation, other data may be substituted under the following conditions:

(A) In school year 2013-2014, an LEA shall use the rating from Subpart (A)(1) of the Teacher Observation and Practice Rating for a classroom teacher with PVAAS

data in place of the portion of the Teacher Specific Rating based on assessments and value-added assessment system data (Paragraphs (IV)(b)(2)(i) to (vii)) in Subparts (B)(3) and (C)(3) of the rating form.

(B) Starting in school year 2014-2015 and every school year thereafter, if three consecutive school years of PVAAS data are unavailable for the rating of a classroom teacher who provides direct instruction in subjects or grades subject to the assessments, an LEA shall use ratings developed through SLOs for data relating to "progress in meeting the goals of student individualized education plans required under the Individuals with Disabilities Education Act" (IEPs progress) if applicable, and locally developed school district rubrics (Paragraph (IV)(b)(3)).

(3) The following provisions in this subparagraph apply to teacher specific measures based on data related to IEPs progress and locally developed school district rubrics (Paragraphs (IV)(b)(1)(iii) and (iv)).

(i) The portion of the Teacher Specific Rating based on IEPs progress (Paragraph (IV)(b)(1)(iii)) shall be developed by the LEA and validated through an SLO pursuant to Paragraph (IV)(c)(2).

(ii) Any score attributable to a classroom teacher relating to IEP progress (Paragraph (IV)(b)(1)(iii)) and calculated through an SLO shall comprise no more than 5% of the classroom teacher's Final Teacher Effectiveness Rating.

(iii) The portion of the Teacher Specific Rating related to locally developed school district rubrics as listed in Paragraph (IV)(b)(1)(iv) may be based upon rubrics created by the LEA or an LEA may select a measure available through Paragraph (IV)(c) relating to Elective Data. An LEA shall utilize an SLO as set forth in Paragraph (IV)(c)(2) of this section to measure and validate a locally developed school district rubric.

(iv) Any score obtained from locally developed school district rubrics shall comprise not more than 5% of the Final Teacher Effectiveness Rating for a classroom teacher with PVAAS data as defined in Paragraph (IV)(b)(2)(iii).

(v) For a classroom teacher without any attributable assessment or PVAAS data (Paragraphs (IV)(b)(1)(i) and (ii)), or data related to IEP progress (Paragraph (IV)(b)(1)(iii)), the locally developed school district rubric or rubrics as described in Paragraphs (IV)(b)(1)(iv) and (b)(3)(iii) shall comprise no more than 15% of a classroom teacher's Final Teacher Effectiveness Rating.

(vi) For classroom teachers with no assessment data, no PVAAS data and no SLOs for IEP progress or locally developed school district rubrics in school year 2013-2014, an LEA shall use the rating from Subpart (A)(1) for total Teacher Observation and Practice Rating for a classroom teacher in Subparts (B)(3) and (C)(3) of the rating form.

(4) If a classroom teacher, who is working or has worked for other LEAs in the Commonwealth, is being considered for employment by a different LEA, the prospective employer may ask the teacher for written authorization to obtain the teacher's teacher specific data from a current or previous employer to provide for the continuity of the 3 year rolling average described in Paragraph (IV)(b)(2)(iv).

(c) *Elective data.*

(1) This third area will comprise 20% of the Final Teacher Effectiveness Rating. Elective Data shall consist

of measures of student achievement that are locally developed and selected by the LEA from a list approved by the Department and published in the Pennsylvania Bulletin by June 30 of each year, including, but not limited to, the following:

- (i) District-designed measures and examinations.
- (ii) Nationally recognized standardized tests.
- (iii) Industry certification examinations.
- (iv) Student projects pursuant to local requirements.
- (v) Student portfolios pursuant to local requirements.

(2) LEAs shall use an SLO to document the process to determine and validate the weight assigned to Elective Data measures that establish the Elective Rating. An SLO shall be used to record and verify quality assurance in validating measures of Elective Data, IEPs progress or locally developed school district rubrics on the zero-to-three-point scale and the assigned weight of a measure in the overall performance rating of a classroom teacher. The Department will provide direction, guidance and templates for LEAs to use SLOs in selecting, developing and applying Elective Data measures.

(3) All LEAs shall have SLOs in place for collecting Elective Data and ratings for school year 2014-2015. If Elective Data is unavailable in school year 2013-2014, an LEA shall use the rating in Subpart (A)(1) total Teacher Observation and Practice Rating of the form for a classroom teacher. The rating from Subpart (A)(1) in the form shall be used in Subparts (B)(4) and (C)(4) for the 20% of the classroom teacher's overall performance rating.

(4) If multiple Elective Data measures are used for one classroom teacher, the LEA shall determine the percentage weight given to each Elective Data measure.

(d) *Transfer option.* A classroom teacher who transfers from one building, as defined for building level data (Paragraph (IV)(a)(1)), to another within an LEA, shall have the option of using the Teacher Specific Rating in place of the Building Level Rating for the employee's evaluation in the new placement for two school years starting on the date when the classroom teacher begins the assignment in the new location. A classroom teacher who elects this option shall sign a statement of agreement giving the LEA permission to calculate the final rating using this method.

(e) *Administrative action based on available data.* Nothing in these standards of use for multiple measures of student performance, this section or this chapter shall be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(V.) Recordkeeping: Maintenance of Rating Tool Data, Records and Forms

(a) *Records to be maintained.* It shall be the duty of the LEA to establish a permanent record system containing ratings for each employee within the LEA and copies of all her or his ratings for the year shall be transmitted to the employee upon her or his request; or if any rating during the year is unsatisfactory copy of same shall be transmitted to the employee concerned. No employee shall be dismissed for incompetency or unsatisfactory performance unless such rating records have been kept on file by the LEA.

(b) *Reporting of data restricted to aggregate results.* Pursuant to Section 1123(i) of the Public School Code

11-1123(i), LEAs shall provide to the Department the aggregate results of all classroom teacher evaluations.

(c) *Confidentiality.* Each LEA shall maintain records in accordance with Section 708(b)(7) of the act of February 14, 2008 (P.L. 6, No. 3), known as the “Right-to-Know Law,” (65 P.S. § 67.708(b)(7)), and Sections 221(a)(1) and 1123(p) of the Public School Code (24 P.S. §§ 2-221(a)(1) and 11-1123(p)).

(VI.) LEA Alternative Rating Tool.

The Department will review at the request of an LEA an alternative rating tool that has been approved by the LEA governing board. The Department may approve for a maximum period of not more than five years any alternative rating tool that meets or exceeds the measures of effectiveness established under 24 P.S. § 1123.

[Pa.B. Doc. No. 13-1115. Filed for public inspection June 21, 2013, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Prescribing

The State Board of Medicine (Board) amends § 16.92 (relating to prescribing, administering and dispensing) to read as set forth in Annex A.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final-form rulemaking is authorized under section 8 of the Medical Practice Act of 1985 (act) (63 P.S. § 422.8).

Background and Purpose

Poisoning is the leading cause of accidental death in the United States, and nine out of ten poisoning deaths are related to prescription drug overuse or abuse. See Warner M., et al. (2011). “Drug poisoning deaths in the United States, 1980–2008.” National Center for Health Statistics data brief, no 81. In this Commonwealth and 29 other states, poisoning is the leading cause of injury death. States must take steps to reverse this preventable cause of death.

While the Board already had in place a regulation to provide safeguards for physicians prescribing, administering and dispensing controlled substances, the Board failed to address and provide similar safeguards related to noncontrolled prescription drugs. Requiring the same safeguards for noncontrolled prescription drugs would be unnecessary and overly burdensome because most noncontrolled prescription drugs, such as antibiotics, are used very safely and are not drugs of abuse themselves or used in association with drugs of abuse. As more fully set forth in the proposed rulemaking published at 42 Pa.B. 1122 (March 3, 2012), the Board identified three noncontrolled drugs with sufficiently similar propensities for abuse or use in combination with drugs of abuse to

controlled substances, and for which there are numerous cases reported of fatal overdose, to warrant placing additional requirements on physicians who prescribe, administer and dispense these drugs.

Summary of Comments and Responses to Proposed Rulemaking

Comments from the public

The proposed rulemaking was published at 42 Pa.B. 1122. The Board received comments from the Pennsylvania Pharmacists Association; JNESCO District Council 1, IUOE/AFL-CIO; the Pennsylvania Medical Society; and Kalogredis, Sansweet, Dearden and Burke, Ltd. (KSDB) on behalf of Troy Pharmacy. In addition, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

The Pennsylvania Pharmacists Association stated that it supported the proposed rulemaking as written. JNESCO, on behalf of 5,000 nurses and health care workers, wrote in support of the proposed rulemaking, noting that “it is vital to monitor those substances that have the potential to be improperly prescribed” and that health care workers have a “moral, ethical and legal obligation to ensure the safety and well-being of the patients we serve.” JNESCO noted that the Commonwealth would be the 17th state to further regulate these drugs. The Board appreciates the support of these groups.

The Pennsylvania Medical Society, representing about 17,000 physicians, residents and medical students, wrote in support of the proposed rulemaking and applauded the Board for tackling prescription drug abuse and diversion. The Pennsylvania Medical Society agreed that butalbital, carisoprodol and tramadol hydrochloride are medications with the potential for overuse or abuse with potential fatal side effects. The Pennsylvania Medical Society also noted with approval the Board’s emphasis on ensuring that the doctor-patient relationship is paramount prior to prescribing medications. The Board appreciates the support of the Pennsylvania Medical Society.

KSDB wrote in opposition to the proposed rulemaking. They viewed the proposed rulemaking as an attempt to classify the three drugs as controlled substances, which it viewed as the proper role of the Federal Drug Enforcement Administration (DEA), and stated that the Board was attempting to bypass the DEA drug review system for adding or deleting controlled substances.

This final-form rulemaking does not attempt to reclassify the three drugs. As noted by KSDB, at the Federal level, the DEA is involved in the classification of drugs as controlled substances. In fact, on December 12, 2011, the Administrator of the DEA issued a final rulemaking placing carisoprodol into Schedule IV on the Federal list of controlled substances. See 21 CFR 1308 (relating to schedules of controlled substances).

The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act) (35 P.S. §§ 780-101–780-144) contains the listing of substances controlled in this Commonwealth and vests authority to control substances listed in the statutory schedules with the Secretary of Health. The Board is not seeking to amend the Drug Act. Rather, the Board is regulating the practice of medicine within this Commonwealth.

KSDB also suggested that the Board’s proposed rulemaking violated the Commerce Clause of the United States Constitution because it would “force non PA licensed medical practitioners to follow onerous ‘controlled

drug' procedures to prescribe these drugs, rather than prescribing them as non controlled drugs which is permitted in their home state" thereby discriminating "against out of state licensed physicians prescriptions being dispensed by a PA licensed pharmacy." The Board disagrees with KSDB's statement that Board regulations must be followed by physicians who are not licensed in this Commonwealth and who are not practicing in this Commonwealth. Physicians are required to follow the laws and regulations of the state in which they are practicing.

Comments from HPLC and IIRC

The HPLC submitted comments to the Board on April 4, 2012. The HPLC first suggested that § 16.92(b)(2) may need to be clarified as to who does the reevaluation and that the reevaluation should become part of the medical record or that subsection (b)(2) should be moved to subsection (b)(4)(ii) so it becomes part of the written medical record. Reevaluations may be done by the same practitioner that can perform an initial evaluation. As set forth in § 16.92(b), a licensed physician or physician assistant shall carry out or cause to be carried out the functions in § 16.92(b)(1)—(8). Reevaluations shall be recorded in the medical record for several reasons. Section 16.92(b)(4) states that accurate and complete medical records must document the evaluation and care received by patients. Section 16.95(a) (relating to medical records) provides that a physician shall maintain medical records which accurately, legibly and completely reflect the evaluation and treatment of the patient. Reevaluation is, of course, a subset of evaluation. For these reasons, the Board does not believe § 16.92(b)(2) requires clarification.

Similarly, the HPLC suggested that § 16.92(b)(3) may need to be clarified in regard to who does counseling. As previously noted, the provisions of § 16.92(b) shall be carried out by or be caused to be carried out by a licensed physician or physician assistant. The Board does not believe it is necessary to repeat the provisions of subsection (b) in each of the paragraphs under subsection (b).

The HPLC recommended that the Board use "licensed health care provider" consistently throughout the regulation. The Board agrees and added "licensed" to § 16.92(b)(4)(i)(A) and (8).

IIRC questioned the Board's assertion in the proposed rulemaking that there would not be additional costs or additional recordkeeping associated with the rulemaking, noting that it appeared that the more stringent requirements for evaluations, which necessitate recording evaluations, would likely impact the regulated community in both additional costs and recordkeeping requirements. The Board amended the fiscal costs statement and the regulatory analysis to acknowledge those potential costs to the regulated community as suggested.

IIRC questioned whether "or cause to be carried out" might be exploited by unscrupulous practitioners to circumvent the intent of the final-form rulemaking and suggested the Board consider clarifying the phrase. The regulation applies to physicians and physician assistants and only physicians are authorized to delegate the performance of medical services. The Board is confident that physicians know to whom they are permitted to delegate particular tasks and understand that "or cause to be carried out," which has been in the Board's regulation for many years, makes the physician responsible for a task delegated to another. Therefore, the Board declines to add additional language related to the phrase.

IIRC noted that, although an initial medical history and physical examination are required, the medical re-

cords are not required to include documentation of the initial medical history and physical examination of a patient. The Board disagrees. The Board's recordkeeping regulation, § 16.95, requires a physician to maintain medical records for patients which accurately, legibly and completely reflect the evaluation and treatment of the patient, which would include the initial medical history and results of a physical examination. In addition, § 16.92(b)(4) states that "accurate and complete medical records must document the evaluation and care received by patients." As amended in the final-form rulemaking, § 16.92(b)(4)(ii) requires documentation of the name, strength and quantity of a drug and the date on which a drug was prescribed, administered or dispensed, as well as any change in the patient's symptoms, diagnosis or directions for drug use.

IIRC also suggested that subsection (b)(4) be amended to require documentation in the medical record of the periodic reevaluations required under subsection (b)(2). The Board believes that §§ 16.92(b)(4) and 16.95 already require documentation of reevaluations. Nevertheless, the Board amended § 16.92(b)(4)(ii)(B) to more specifically require recording information obtained on reevaluation.

IIRC questioned the exemption of a patient in an inpatient care setting from counseling regarding possible side effects. IIRC suggested adding "possible side effects" to the counseling requirements in the first sentence of subsection (b)(3) and deleting "possible side effects" from the exemption in the second sentence of subsection (b)(3). The first sentence of subsection (b)(3) is a general statement requiring patients to be counseled regarding the condition diagnosed and the drug prescribed, administered or dispensed. This general statement would not benefit from adding one particular aspect of counseling, that is, counseling about possible side effects. The second sentence of subsection (b)(3) serves two purposes: it elaborates on the content of the counseling generally required; and it exempts a patient in an inpatient care setting from the counseling requirement. Generally, patients treated in an outpatient setting are counseled on the drug, dosage, duration and other instructions for use because they are expected to administer the prescribed drugs to themselves. In an inpatient setting, it is usually the medical/nursing staff of the facility that will be administering the drugs and monitoring the patient for possible side effects. Additionally, a patient in an inpatient care setting may be unconscious, under anesthesia or otherwise incapable of counseling. A patient in an inpatient care setting may be in cardiac arrest or other emergent condition, such as in an emergency room or intensive care unit, where delaying the prescription and administration of a drug until the patient can be counseled could cause patient death. The patient counseling provision in this final-form rulemaking is identical to the patient counseling provision in the existing regulation and no problems with the provision have been brought to the Board's attention. The Board therefore declines the suggested edit to subsection (b)(3).

IIRC suggested that the information in subsection (b)(4)(i) and (ii) should be specifically required to be recorded in the medical record on and after the initial occasion when a drug is prescribed. The Board agrees and amended the final-form rulemaking accordingly.

IIRC raised several additional issues related to clarity of the rulemaking. IIRC suggested that the Board consider including a reference to the appropriate section of the act regarding penalties for noncompliance with the proposed rulemaking. None of the other provisions in

Subchapter F (relating to minimum standards of practice) include this reference and it is understood that failure to comply may result in disciplinary action. The Board declines to add the reference to the final-form rule-making.

IRRC suggested that the Board use “licensed health care provider” consistently in the regulation. The Board made amendments to do so in this final-form rulemaking.

IRRC asked if a prescription relayed electronically to a pharmacist meets the requirement in subsection (b)(5) that an emergency oral prescription be covered by a written prescription delivered to the pharmacist within 72 hours. This requirement is virtually identical to the Department of Health regulation in 28 Pa. Code § 25.45 (relating to emergency oral prescription). The DEA amended 21 CFR Parts 1300, 1304, 1306 and 1311 at 75 FR 16236 (March 31, 2010) to provide health care practitioners the option of transmitting prescriptions for controlled substances electronically. The Department of Health published a notice concerning electronically transmitted prescriptions at 40 Pa.B. 7160 (December 11, 2010). In this notice, the Department of Health clarified its position on whether the electronic transmission of prescriptions to a pharmacy is an acceptable practice for the medical and pharmaceutical communities under the Drug Act and its regulations. The notice clarified the Department’s interpretation that a prescription transmitted electronically or by facsimile constitutes a “written order on a prescription blank” and that an electronically-transmitted prescription for a controlled substance is considered to be typewritten, provided that the transmission of the prescription otherwise complies with Federal and State laws and regulations, including the Board’s regulations. Additionally, the State Board of Pharmacy amended § 27.201(b)(5) (relating to electronically transmitted prescriptions) to provide that “the electronic transmission of a prescription . . . is considered a written prescription order.” The Board believes the regulated community understands that a “written prescription” may now be transmitted electronically, so long as the licensed health care practitioner complies with the applicable Federal and State laws and regulations.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact and will not impose additional paperwork requirements on the Commonwealth or its political subdivisions. Physicians prescribing, administering or dispensing the three additional drugs will need to ensure proper examinations of patients to assess the appropriateness of prescribing these three drugs and keep medical records that accurately reflect the care provided to patients. If there are physicians who are not already examining patients to assess the appropriateness of prescribing these three drugs, these physicians will need to conform to the regulation. Because of the high potential for abuse, misuse, dependency and possible death associated with these three drugs, the Board speculates that few physicians are currently prescribing these drugs without first carrying out, or causing to be carried out, an examination of the patient and appropriate documentation in the medical record.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 22, 2012, the Board submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 1122, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 9, 2013, the final-form rulemaking was approved by the HPLC. On May 15, 2013, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 16, 2013, and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by writing to Teresa Lazo, Board Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, tlazo@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 42 Pa.B. 1122.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this preamble.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.92 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JAMES W. FREEMAN, MD,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3067 (June 1, 2013).)

Fiscal Note: Fiscal Note 16A-4933 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter F. MINIMUM STANDARDS OF PRACTICE

§ 16.92. Prescribing, administering and dispensing.

(a) For purposes of this section, “drug” includes the following:

(1) Controlled substances under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) or substances that are controlled substances under Federal law.

(2) Carisoprodol or agents in which carisoprodol is an active ingredient.

(3) Butalbital or agents in which butalbital is an active ingredient.

(4) Tramadol hydrochloride or agents in which tramadol hydrochloride is an active ingredient.

(b) When prescribing, administering or dispensing drugs regulated under this section, a person licensed to practice medicine and surgery in this Commonwealth or otherwise licensed or regulated by the Board shall carry out, or cause to be carried out, the following minimum standards:

(1) *Initial medical history and physical examination.* An initial medical history shall be taken and an initial physical examination shall be conducted unless emergency circumstances justify otherwise. Medical history and physical examination information recorded by another licensed health care provider may be considered if the medical history was taken and the physical examination was conducted within the immediately preceding 30 days. The physical examination shall include an objective evaluation of the heart, lungs, blood pressure and body functions that relate to the patient's specific complaint.

(2) *Reevaluations.* Reevaluations of the patient's condition and efficacy of the drug therapy shall be made consistent with the condition diagnosed, the drug or drugs involved, expected results and possible side effects.

(3) *Patient counseling.* The patient shall be counseled regarding the condition diagnosed and the drug prescribed, administered or dispensed. Unless the patient is in an inpatient care setting, the patient shall be specifically counseled about dosage levels, instructions for use, frequency and duration of use and possible side effects.

(4) *Medical records.* Accurate and complete medical records must document the evaluation and care received by patients.

(i) On the initial occasion when a drug is prescribed, administered or dispensed to a patient, the medical record must include the following:

(A) A specification of the symptoms observed by the licensed health care provider and reported by the patient.

(B) The diagnosis of the condition for which the drug is being given.

(C) The directions given to the patient for the use of the drug.

(D) The name, strength and quantity of the drug and the date on which the drug was prescribed, administered or dispensed.

(ii) After the initial occasion when a drug is prescribed, administered or dispensed, the medical record must include the information required in subsection (b)(4)(i)(D) and changes or additions to the information recorded under subsection (b)(4)(i)(A)—(C).

(5) *Emergency prescriptions.* In the case of an emergency contact from a known patient, a prudent, short-term prescription for a drug may be issued. Neither a refill nor a consecutive issuance of this emergency prescription may be given unless a physical examination and evaluation of the patient is first conducted by a licensed health care provider. The results of this examination and evaluation shall be recorded in the patient's medical record together with the diagnosis of the condition for which the drug is being prescribed. An emergency oral prescription for a Schedule II controlled substance shall be covered by a written prescription delivered to the pharmacist within 72 hours.

(6) *Compliance with other laws.*

(i) This section may not be construed as restricting or limiting the application of The Controlled Substance, Drug, Device and Cosmetic Act or statutes or regulations of the Department of Health and the Department of Public Welfare that govern the prescription, administration and dispensation of drugs and medical recordkeeping in certain health care facilities.

(ii) This section may not be construed as restricting or limiting the application of Federal laws or regulations that govern the prescription, administration and dispensation of drugs and medical recordkeeping in certain health care facilities.

(iii) This section does not relieve a person from complying with more stringent standards that may be imposed by another statute or regulation.

(7) *Compliance with facility policy.* This section does not relieve a person from complying with more stringent standards that may be imposed by the health care facility in which the person practices or by the person's employer.

(8) *Adherence to standards of practice.* Compliance with this section will not be treated as compliance with the standards of acceptable and prevailing medical practice when medical circumstances require that the licensed health care provider exceed the requirements of this section.

[Pa.B. Doc. No. 13-1116. Filed for public inspection June 21, 2013, 9:00 a.m.]

STATE BOARD OF OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Continued Competency

The State Board of Occupational Therapy Education and Licensure (Board) amends § 42.17 (relating to fees) and adds §§ 42.51—42.58 (relating to continued competency) to read as set forth in Annex A.

Statutory Authority

Section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)) authorizes the Board to promul-

gate and adopt rules and regulations consistent with law as it deems necessary for the performance of its duties and the proper administration of the act. Section 15(a) of the act (63 P.S. § 1515(a)) further provides that the “board may establish additional requirements for license renewal designed to assure continued competency of the applying occupational therapist. . . .”

Summary

The final-form rulemaking enacts the requirement that occupational therapists maintain continued competency by requiring occupational therapists to complete 24 contact hours per biennium in acceptable continued competency activities. Acceptable continued competency activities include distance and in-person education programs, writing on occupational therapy topics in peer-reviewed journals and other non-peer-reviewed publications, volunteerism related to occupational therapy—characterized as unpaid service, fieldwork supervision, mentorships and professional study groups, and presentation and instruction.

Response to Comments

Notice of proposed rulemaking was published at 41 Pa.B. 1909 (April 9, 2011). Publication was followed by a 30-day public comment period during which the Board received public comments from the following: licensed occupational therapists Patty Godfrey, Linda Miller, Ruth Crouthamel, Julie Kearney, Karen Smith, Jessica Collini, Ann Stuart, Beth Ann Duchess, Amy Dale, Lori Glassbrenner, Shirley Weaver, Deborah Ross, Cindy Kauffmann, Nancy Dubuar, Joyce Boivin, Sharon Glover and Kathleen LeGuern-Duckett; licensed occupational therapy assistants Stacy Stefanik and Donald Booker; occupational therapy student Laura Mariotti; LaVerne Russell, Director of Clinical Operations, Genesis Rehab Services; Cathy Dolhi, President, Pennsylvania Occupational Therapy Association, Inc. (POTA); Anne Henry, Chief Operating Officer, Pennsylvania Health Care Association/Center for Assisted Living Management (PHCA/CALM); and Marcy M. Buckner, State Policy Analyst, American Occupational Therapy Association, Inc. (AOTA). Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

General

The POTA commented that it wholeheartedly supported the regulations.

IRRC, PHCA/CALM and several individual commentators questioned whether the additional burdens of these regulations will have a negative effect on part-time practitioners potentially driving them from the profession. In this final-form rulemaking, the Board expanded the list of permissible activities in § 42.55(b) (relating to acceptable continued competency activities) to include the addition of unpaid service. This expansion increases the continued competency options for licensees and decreases concerns about cost and the ability to complete the required hours per biennium.

PHCA/CALM commented that requiring occupational therapists to complete these requirements will be a burden to occupational therapy employers and Medical Assistance. Because the statutory requirement of competence rests on the license holder and not the employer, the Board does not believe that the continued competence requirement would burden employers and Medical Assist-

ance. Nonetheless, in this final-form rulemaking, the Board expanded the list of acceptable activities so that occupational therapists can choose to complete free or inexpensive activities if desired, lowering costs. Further, under § 42.54(d) (relating to education program providers), employers can provide their own educational courses for their employees, effectively reducing costs and scheduling issues, by either becoming a preapproved provider or seeking Board approval. Since Board-approved providers are not charged for each course offered, but rather only a \$40 initial provider approval fee, and if the provider desires to continue to be a provider a subsequent \$40 for biennial approval, the cost to the employer of providing the education is nominal.

AOTA encouraged the Board to require occupational therapy assistants to complete continued competence activities. The Board agrees that occupational therapy assistants would benefit from completing continued competence activities and notes that the act of July 5, 2012 (P.L. 1132, No. 138) (Act 138) amended the act to authorize continued competence for occupational therapy assistants as a condition of biennial renewal. The Board intends to promulgate a separate rulemaking to implement the amendments made to the act by Act 138, which will address continued competence for occupational therapy assistants.

§ 42.17. Fees

A commentator stated that the \$120 fee for new licensure is too high. The Board notes that the total of the three new fees in § 42.17 is \$120; however, there is not a \$120 fee. Section 42.17 contains three fees based upon actual Board expenses. There is an initial application fee of \$40 for approval of a provider who is not already included in the lengthy list of preapproved providers in § 42.54(c) but seeks to offer educational courses under § 42.55(d). With this approval, the Board-approved provider can offer unlimited courses during the biennial period. In subsequent years, if the Board-approved provider wishes to continue offering courses, there is a \$40 biennial renewal fee. There is an individual approval fee of \$40 for licensees who seek to obtain credit for educational courses from a provider that is neither preapproved nor Board-approved under § 42.54(e). Rather than limiting occupational therapists to taking courses from preapproved providers only, the Board created a process whereby other providers can receive approval for their educational offerings and a process whereby occupational therapists can obtain credit for courses offered by providers that are not preapproved and have not applied for Board approval.

IRRC asked the Board to provide a more detailed analysis of costs imposed on the regulated community and State government. Similar to licensees of other boards within the Bureau of Professional and Occupational Affairs (Bureau) that mandate continuing education, there are two groups within the occupational therapy regulated community that will incur costs in connection with these regulations: occupational therapists who incur costs associated with completing the continued competency activities in § 42.55(b); and providers who seek Board approval. In the former, the costs vary depending on the activities individual licensees select but, on average, the Board estimates the cost to be \$300 for each occupational therapist per year. For example, occupational therapists who complete their 24 hours through a combination of fieldwork supervision, writings and presentations will not incur direct costs. Similarly, occupational therapists who complete their 24 hours through

instruction, mentorship and unpaid service will not incur direct costs. Conversely, occupational therapists who choose to complete the 24 hours through education courses not provided by their employers or which charge a fee will incur costs, which can range from \$10 to \$50 per hour. The second regulated community to incur costs are providers related to the development and marketing of their continued competence programs. Those costs, however, may be recouped through the fees charged for programs. In addition to the costs to the regulated community, this final-form rulemaking imposes costs on State government associated with the costs of processing provider applications and monitoring compliance with the regulations through audit. These costs to State government are borne by the providers and the occupational therapist population.

The HPLC questioned whether the fee report forms need to be updated. The Board has done so. The fees added to § 42.17 are based upon a projected number of providers based upon similar provider population for other boards within the Bureau. Actual information will only be available after the first renewal cycle.

§ 42.52. Definitions

In this final-form rulemaking, the Board amended the definition of “level II fieldwork” to more closely capture the experience as defined by the Commission on Education’s Guidelines for an Occupational Therapy Fieldwork Experience—Level II. The Board also amended the definitions of “mentor,” “mentorship” and “protégé” by adding group as well as one-on-one teaching/coaching experiences to include professional study groups, like those used by the American Society of Hand Therapists (ASHT), within § 42.55(b)(2). The Board believes that these study groups are equally as valuable as one-on-one experiences but are analogous to a mentor-protégé experience.

IRRC questioned whether the reference to the Department of Education in the definition of “mentor” includes both the Federal Department of Education and the Pennsylvania Department of Education and what certified groups are included within the definition of “mentor.” The Board believes that individuals who work for or are certified by agencies in addition to Department of Education are competent to serve as mentors, as are those individuals licensed in other states, and many individuals exempt from State licensure requirements. Therefore, in this final-form rulemaking, the Board expanded the definition of “mentor” to include those in the education field as well as those exempt from licensure by statute. Examples of individuals exempt from licensure by statute might include those that fall within the exemptions in section 7(3) of the act (63 P.S. § 1507(3)), section 18 of the Medical Practice Act of 1985 (63 P.S. § 422.18) or section 3 of the Professional Psychologists Practice Act (63 P.S. § 1203). The important characteristic of a mentor is that the individual can provide specific knowledge and skills that will advance the occupational therapist’s competency in the practice of occupational therapy.

In connection with the definition of “protégé,” the HPLC and IRRC recommended that “licensed” should be added to “other health care professional.” Additionally, IRRC questioned who fits within the category of “another health care professional.” In this final-form rulemaking, the Board replaced “other health care professional” with “a mentor” since that definition is broader and encompasses the HPLC and IRRC recommendations.

The Board amended the definition of “professional continued competence portfolio” to delete the requirement of a self-assessment. While the Board still believes that occupational therapists should conduct a self-assessment to determine which continued competency activities should be completed, upon further reflection, the Board decided that a self-assessment should not be documentation that shall be submitted to the Board upon audit.

The Board also added a definition of “unpaid service” as used in § 42.55(b)(7). This term describes volunteerism in organizations when the unpaid service directly relates to occupational therapy. Volunteerism might include providing unpaid occupational therapy services such as assisting Habitat for Humanity in implementing living plans for persons who receive occupational therapy services, guiding a day care or township on occupational therapy issues in their design of a playground for disabled children, planning or working at community health fairs and serving in leadership or committee positions on professional associations.

§ 42.53. Continued competency requirements

IRRC questioned why the Board chose to require 24 hours of continued competency activities. In formulating the required number of continued competency hours, the Board looked to the National Board for Certification in Occupational Therapy, Inc. (NBCOT) requirement for National certification as an occupational therapist. NBCOT requires its certificate holders to complete 36 professional development units (PDU) triennially. The Board’s requirement of 24 hours per biennium is parallel.

PHCA/CALM commented that 24 hours of continuing education is excessive, especially since physical therapists only have to complete 20 hours. In response, the Board notes that the act of July 4, 2008 (P.L. 293, No. 38) amended section 7.2 of the Physical Therapy Practice Act (63 P.S. § 1307.2) to require physical therapists and physical therapist assistants to attend and complete 30 contact hours of mandatory continuing education during each biennial renewal period. The State Board of Physical Therapy published a final-form rulemaking at 42 Pa.B. 7652 (December 22, 2012) implementing the increased continuing education requirement.

IRRC also questioned whether continued competency hours completed during the exempt period may be carried over. The Board has not chosen to permit credit for carry over regardless of whether it was completed during the exempt period or in excess of the mandatory required. While the Board believes that activities completed during the exempt period and in excess of that required is personally beneficial for occupational therapists, the Board calls for licensees to complete at least 24 hours of continued competency activities during each period required. Anecdotally, the Board believes that carry over generally poses a paperwork burden for both licensees and boards within the Bureau.

The HPLC asked the Board to clarify whether the continued competency requirement begins after the licensee’s initial renewal date or after the second renewal date. Additionally, a commentator questioned whether there are grace periods given for new graduates. The Board amended § 42.53(b) (relating to continued competency requirements) to clarify that an occupational therapist is exempt from completing the continued competency requirement only for the first biennial renewal following initial licensure.

Section 42.53(c) and (d) addresses the number of contact hours an occupational therapist shall complete to reinstate a license. Applicants whose licenses have lapsed or been inactive for less than 4 years are required under § 42.53(c) to show compliance with the continued competency requirement during the biennium immediately preceding the request for reactivation. Conversely, applicants seeking to reinstate a revoked or suspended license shall complete the continued competency contact hour requirement for each biennium in which the license was suspended or revoked. AOTA recommended a structured completion requirement based on the number of years absent from practice. Similarly, IRRRC questioned how health, safety and welfare is protected when occupational therapists only have to complete 24 hours regardless of the number of years inactive. In determining the amount of continued competency hours required, the Board was guided by the requirement in section 15(a) of the act that licensees whose license has lapsed for 4 years or more must be reexamined. Because a lapsed license is not caused by a disciplinary action, the Board believes that for the first biennial period only the current requirement is necessary. When the license remains inactive for another biennial period, the Board is satisfied that reexamination required under section 15(a) of the act will ensure continued competency without the need for the completion of additional continued competency hours. However, because suspension and revocation result from disciplinary action, the Board believes that additional continued competency hours are warranted regardless of the additional reexamination requirement when applicable.

The HPLC recommended that the Board switch the order of § 42.53(d) so that the provision begins with “as a condition of reinstatement.” The Board finds this suggestion reasonable and made this amendment in this final-form rulemaking.

§ 42.54. *Education program providers*

Proposed § 42.54(b) reserved within the Board the right to reject an activity if it is outside the scope described in § 42.55(a) or is “otherwise unacceptable because of presentation or content.” IRRRC questioned what types of presentation or content would be “otherwise unacceptable.” Because a presentation or content would only be unacceptable if it did not comply with § 42.55(a), the Board deleted this text in this final-form rulemaking.

Section 42.54(c) contains the list of preapproved providers. IRRRC questioned whether the reference to “State” in § 42.54(c)(1) includes in-State and out-of-State providers. Because the Board intends this provision to include all National, international and state level professional organizations, such as the AOTA and the POTA, the Board replaced “State” with “state-level.” IRRRC also recommended that a list of preapproved providers be available on the Board’s web site. The Board intends to include this information, as well as a list of Board-approved providers, on its web site.

Section 42.54(e) describes the individual activity approval process for education courses when the provider is neither preapproved nor Board-approved. A commentator questioned whether the approval process requires occupational therapists to complete the activity, pay \$40 and then wait for a decision on approval. Section 42.54(d) allows occupational therapists to apply for individual activity approval at any time during the biennium. The only caveat is that an occupational therapist who applies for approval after completing the course risks the possibility that the course may not ultimately be approved.

However, there may be course-specific instances when waiting until after completion may provide the licensee with more information about the relevance of the course to the practice of occupational therapy.

The HPLC recommended that the Board amend § 42.54(e)(2) to make it consistent with § 42.54(d)(1) regarding notification of disapprovals. The Board agrees with this recommendation and amended § 42.54(e)(2) accordingly.

§ 42.55. *Acceptable continued competency activities*

Section 42.55(b) clarifies that credit will only be awarded for activities that are relevant to occupational therapy practice. To provide occupational therapists with guidance regarding what is considered relevant to occupational therapy practice, § 42.55(a)(1) includes the common practice areas of direct care, management, education and research. The HPLC asked the Board to define “management.” Management is a term of art used in the occupational therapy profession to mean practice oversight regardless of the environment. The Board chose not to include this definition in § 42.52 (relating to definitions) because it is widely recognized in the profession.

Section 42.55(b) contains the seven classes of activities that qualify for continued competency credit: attendance at educational courses; participation in mentorship as either a mentor or a protégé; supervision of level I and level II fieldwork students; engaging in professional writing and editing; preparing for and delivering presentations and instruction; and unpaid service. With several exceptions and breakdown differences, these seven classes of activities are similar to the NBCOT’s 28 PDUs.

IRRC asked the Board to explain the need for the varied activities. Unlike other licensing boards within the Bureau whose licensees are required to complete continuing education as a condition of biennial renewal, the Board is charged in section 15(a) of the act to “assure continued competency” of occupational therapists. The Board interpreted this statutory requirement as requiring varied experiences beyond merely the traditional continuing education courses. However, upon consideration of this comment and others that were expressed to the Board from public commentators and various other sources while formulating this final-form rulemaking, the Board deleted the cap on the number of contact hours that may be completed through traditional continuing education courses and deleted the requirement that an occupational therapist complete at least two of the acceptable continued competence activities. The Board believes that occupational therapists would benefit from each of the acceptable activities and that completing more than one activity each biennial cycle would result in well-rounded competent occupational therapists. Thus, while not mandated, the Board encourages licensed occupational therapists to assess their own continued competence needs and design a program of a variety of continued competence activities that would most benefit their individual practice of occupational therapy.

IRRC also asked the Board to explain how part-time and full-time occupational therapists can complete the requirements. In the Board’s view, there is not a difference between how part-time and full-time occupational therapists can complete the continued competency requirements as these requirements are not tied to employment. The only requirement is that the occupational therapist choose from the seven enumerated activities within the established caps to total 24 hours. The follow-

ing examples illustrate how an occupational therapist may fulfill the continued competency requirement every 2 years:

- Attending three 1-hour continuing education courses from pre-/Board-/individual-approved providers (which equates to 3 contact hours), completing one academic course from pre-/Board-/individual-approved providers (which equates to 15 contact hours) and serving on the ethics committee of AOTA for 30 hours (which equates to 6 contact hours).

- Participating as a mentor or protégé (depending on the occupational therapist's competence level) with other hand therapists in a professional study group that entered into a mentorship agreement for 20 hours (which equates to 4 contact hours), attending four 3-hour continuing education courses from pre-/Board-/individual-approved providers (which equates to 12 contact hours), publishing an article for a workplace newsletter on a topic related to occupational therapy (which equates to 5 contact hours) and volunteering to work at an occupational therapy booth at a community health fair for 15 hours (which equates to 3 contact hours).

- Supervising a level I fieldwork student (which equates to 1 contact hour), attending the ASHT conference and POTA District V meetings (which equates to 9 contact hours), publishing an article in *Occupational Therapy in Health Care* (which equates to 10 hours) and attending four 1-hour continuing education courses (equates to 4 contact hours).

- Serving on POTA's Commission on Education (about 60 hours of service time) (equates to 12 contact hours), attending the POTA conference (equates to 8 contact hours) and presenting two poster presentations (equates to 4 contact hours) at the New Jersey Occupational Therapy Association's annual conference.

IRRC asked the Board to identify whether costs will be greater for those in limited access areas. The Board believes that costs to complete continued competence contact hours should not be affected by geographic location. Although some areas may have more educational courses available, because activities like instruction, writing, mentorship and fieldwork can be obtained at no cost, a disparity in cost should not be an issue. For example, an occupational therapist can receive credit without spending money for writing an article in a non-peer-reviewed journal such as *Penn Point*, *OT Practice* or an employer-generated newsletter. Further, with the addition of unpaid service in this final-form rulemaking, occupational therapists can obtain credit by performing occupational therapy-related volunteering. For example, an occupational therapist who voluntarily offers assistance to a day care about increasing hand coordination can obtain credit for that service.

IRRC and the HPLC questioned why the Board designed its own activities instead of adopting NBCOT's PDUs. AOTA, and several commentators stated that the Board should not exceed the NBCOT requirement and that it should consider the options in the AOTA Model OT Act. Like section 15(a) of the act, section 3.09(2) of the AOTA Model OT Act requires occupational therapists to maintain continued competency as a condition of biennial renewal. Implementation of this requirement is left to individual boards without recommendation about acceptable activities and required hours.

Regarding NBCOT, as previously explained, with several exceptions and breakdown differences, the Board incorporated NBCOT PDUs into § 42.55(b). For example,

the Board has one category for presentations and instruction in § 42.55(b)(6) while the NBCOT breaks this activity into five activities. Similarly, the Board has one category for writing in § 42.55(b)(4) while the NBCOT activities are broken into seven categories. There are only a few areas where the Board did not incorporate the PDUs: (1) activities wherein documentation supporting completion of the activity was not independently verifiable (NBCOT PDUs 9 and 12); (2) pre-preparation activities (NBCOT PDUs 1 and 2); (3) activities stemming from an employment role (NBCOT PDUs 17 and 28); and (4) collection of data credit (NBCOT PDU 27).

NBCOT PDUs 1 and 2 award credit for performing a self-assessment and developing a professional development plan. Despite the recommendation by commentators, the Board chose not to incorporate these activities as it believes that while both are prerequisites to determining what activities an occupational therapist should complete, neither enhances competence.

The Board also chose not to incorporate NBCOT PDUs 9 and 12 which award credit for independent readings, watching tapes/CDs and learning without assessment, as suggested by two commentators. Even though the Board finds these activities professionally valuable, as they are not capable of independent verification, the Board cannot award continued competency credit. Nonetheless, the information gleaned from these activities may be capable of being used to write an article in a non-peer-reviewed magazine, journal or newsletter, or to teach an employer-generated continuing education program qualifying the occupational therapist for publication or instruction credit under § 42.55(b)(4) and (6).

The Board chose not to incorporate NBCOT PDU 17 as it believed that instructors, regardless of whether they are full-time faculty, adjuncts or trainers, should not receive credit when instruction is a component of their employment role. Under NBCOT guidelines, only full-time faculty and trainers are not awarded credit because teaching is their primary employment role, but adjunct faculty may receive credit for teaching the same course because serving as an adjunct faculty member is not a primary role. In the Board's view, the NBCOT distinction is solely based upon the number of courses taught and does not take into account the identical nature of the content of the courses or the fact that in all three cases the instructor is employed as an instructor. The Board applied this same standard of not awarding credit for developing instructional materials which are part of an employment role when it chose not to incorporate NBCOT PDU 28.

Although the Board decided not to award credit generally when the presentations and the development of instructional materials are part of an employment role, if the instruction or materials are not related to the occupational therapists' employment role, credit may be earned under § 42.55(b)(6)(i). For example, when a faculty member or trainer makes a presentation about occupational therapy at a POTA or AOTA conference, credit may be obtained because the presentations are not part of the occupational therapists' employment role.

The Board also chose not to incorporate NBCOT PDU 27, which awards credit for being a primary or coprimary investigator in extensive scholarly research as recommended by a commentator. While the Board does not award credit for the collection of data phase of research, the investigator can receive credit for oral/poster presentations or writing under § 42.55(b)(4) and (6) related to the research process.

In this final-form rulemaking, the Board added unpaid service which it believes is akin to NBCOT PDU 3 involving volunteerism. The Board concurs with several commentators that occupational therapists expend professional time which enhances their competence in unpaid service of an occupational therapy nature. Examples of credited unpaid service were previously mentioned in the discussion concerning the definition of "unpaid service" in § 42.52.

Several commentators stated that there is no evidence that additional activities beyond mere continuing education make better occupational therapists. As previously noted, the Board amended the final-form rulemaking to delete the 18-hour maximum on the number of contact hours that may be completed through traditional continuing education courses in a given biennial renewal period. However, the Board still believes that a combination of activities provides occupational therapists with an opportunity to obtain a more varied experience thereby achieving continued competence.

Several commentators voiced their concern that the proposed activities other than education courses are academic-focused. Similarly, PHCA/CALM and a commentator noted that the other proposed activities other than education courses are not available to the "average" therapist. Conversely, a commentator stated that the various permitted activities provide licensees with a lot of opportunity to obtain continued competency credit. The Board believes that it has addressed these concerns by clarifying and expanding the list of activities in this final-form rulemaking. Occupational therapists will have a wide variety of options from unpaid services to mentorship, as either a mentor or protégé, and writing for non-peer-reviewed publications, which the Board understands readily accept articles for publication, to obtain the requisite continued competency hours.

Two commentators stated that the Board should re-evaluate the limitations for each activity since each may contribute equally to occupational therapists' competence (that is, the fieldwork supervisor is equally competent as the writer/presenter). The Board compared the limitations on each activity between NBCOT and the proposed rulemaking and amended the final-form rulemaking accordingly. Thus, NBCOT's limitations and the Board's limitations in the final-form rulemaking are similar.

Proposed § 42.55(b)(1)(i) limited the number of educational courses that may be credited per biennium to a maximum aggregate of 18. Two commentators stated that occupational therapists be permitted to complete all 24 hours in educational courses/seminars as NBCOT allows. Further, several commentators stated that having to complete 6 hours in areas other than educational courses will cause a hardship, especially to part-time practitioners, and will not increase practice capability. As previously noted, while the Board strongly believes that continued competence is enhanced by completing a variety of activities, the final-form rulemaking has been amended to remove the limitation on the number of contact hours that may be earned by traditional continuing education courses.

A commentator questioned whether licensed occupational therapists who are obtaining additional education will be able to receive credit for this additional education. Occupational therapy doctorate courses would fall within educational courses. Under final-form § 42.55(b)(1)(ii), a one-credit course equals 15 contact hours. The commentator also asked whether specialized training when there is a test qualifies for continued competency credit. In the

Board's view, when the occupational therapist is the learner, this activity falls within an educational course under § 42.55(b)(1). When the occupational therapist is the instructor, this training falls within presentations/instruction under § 42.55(b)(6).

A commentator questioned whether credit may be obtained for an organization's discipline-specific quarterly professional update meetings. Provided that this meeting would fall within the requirements of an education course offered by an approved provider, credit may be obtained.

IRRC recommended that "directed" be replaced with "instructional" in proposed § 42.55(b)(1)(ii). The Board agrees with IRRC and amended final-form § 42.55(b)(1)(i) accordingly.

Section 42.55(b)(2) delineates the requirements for mentorship credit. In addition to the formalized one-on-one teaching/learning relationship specified in a mentorship agreement between a mentor and a protégé permitted in the proposed rulemaking, the Board added group mentorship to this definition in this final-form rulemaking because occupational therapists, for example, members of ASHT, routinely study together in a formalized relationship. Study, in the Board's opinion, is akin to mentorship and enhances an occupational therapist's continued competency regardless of whether the occupational therapist serves as a mentor or a protégé.

A commentator questioned whether credit can be given for new graduates who are being mentored by a more established therapist. Under § 42.55(b)(2)(iii), both mentors and protégés may earn 1 contact hour for every 5 hours spent in mentorship activities up to a maximum aggregate of 12 hours per biennium. In this final-form rulemaking, the Board doubled the aggregate amount proposed to be permitted to parallel the NBCOT standard. For new graduates, this credit could be obtained in biennial periods following the first required renewal period because new occupational therapists are exempt from completing the continued competency requirement for the first biennial renewal following initial licensure under § 42.53(b)(2)(b). The mentor, however, could receive credit for the entire mentorship.

The HPLC recommended that the post-mentorship summary required under § 42.55(b)(2)(iv) include the number of hours spent in the mentorship program. Because this information is already required under § 42.55(b)(2)(ii), the Board has not amended § 42.55(b)(2)(iv).

Section 42.55(b)(3) delineates the requirements for fieldwork supervision credit. Proposed § 42.55(b)(3)(i) limited credit to 3 contact hours per biennium for supervising level I fieldwork students and 6 contact hours per biennium for supervising level II fieldwork students. A commentator stated that the time investment necessary to supervise a level I student is greater than 3 contact hours per student. The commentator also stated that the limitation of contact hours per student and per biennium will decrease the likelihood that other occupational therapists will supervise fieldwork students. IRRC questioned how the proposed credit cap was determined. Owing to the commentator's concern and in an effort to parallel the NBCOT cap for fieldwork supervision, the Board increased the amount of credit which can be obtained from fieldwork supervision to a maximum aggregate of 12 contact hours per biennium.

Section 42.55(b)(4) delineates the requirements for professional writing credit. A commentator questioned whether there is a limitation on the number of contribu-

tors who may receive credit for the writing an article. The Board understands that at times multiple authors contribute to the writing of an article, chapter or textbook. As a result, in this final-form rulemaking, the Board has not added a cap on the number of authors who may receive credit for professional writing.

IRRC and a commentator questioned what is a “non-peer-reviewed journal” as used in § 42.55(b)(4)(i)(D). The commentator questioned whether non-peer-reviewed articles can be published in *PennPoint* or within an organization’s database. Unlike peer-reviewed journals which require a blind review under uniform criteria, non-peer-reviewed journals undergo editorial review by the journal publisher but do not require this same level of blind review. Example of non-peer-reviewed journals relating to occupational therapy include *PennPoint*, *OT Practice* and *SIS Quarterly*, as well as magazines, newspapers and online journals of general circulation and employer-generated newsletters where the writing specifically relates to occupational therapy, for example, an article which describes a case study about occupational therapy care.

A commentator stated that because there is not a guarantee that the article will be published, an occupational therapist who submits an article to a publisher but does not have it published will be unable to obtain credit under § 42.55(b)(4)(ii). Because the Board was cognizant that many articles submitted to peer-reviewed journals are not published, the Board permits the publication of articles in non-peer-reviewed journals. Especially for employer-generated publications, the likelihood of publication is significantly higher.

Section 42.55(b)(6) delineates the requirements for presentation and instruction credit. Proposed § 42.55(b)(6)(i) limited contact hour credit to peer-reviewed or invited presentations or workshops related to occupational therapy. IRRC asked the Board to define “invited presentation.” A commentator questioned whether poster sessions receive credit in addition to traditional presentations. The Board appreciates that poster presentations require the same degree of in-depth information as an oral presentations. Therefore, upon further consideration, the Board expanded final-form § 42.55(b)(6)(i) to include oral and poster presentations or instruction related to occupational therapy and deleted the reference to “peer-reviewed and invited” presentations.

A commentator questioned whether instructors and college professors may receive credit for teaching the same course year after year as part of their employment. On that same topic, two commentators recommended that credit be awarded for on-the-job training and local inservices and the preparation time involved in those presentations. The Board previously explained its belief that instructors, regardless of whether they are full-time faculty, adjuncts or trainers, should not receive credit for instruction when that instruction is a component of their employment role. This belief has been incorporated in § 42.55(b)(6)(ii). In the Board’s view, serving as a guest lecturer more than four times per biennium constitutes an employment role. When this instruction is not part of the employment role, credit, albeit only one time per content per biennium, may be awarded under § 42.55(b)(6)(iii).

Three commentators further recommended that credit should also be awarded for preparation time. Consistent with NBCOT standards, § 42.55(b)(6)(i) grants occupational therapists 2 hours of credit for each 60-minute or poster presentation.

Two commentators questioned whether a presenter can receive credit for the same presentation if it is presented to different groups under different providers. This is prohibited by § 42.55(b)(6)(iii). The Board does not believe that repeating a presentation adds to the presenter’s continued competency.

A commentator questioned whether there is a limit on the number of occupational therapists who may share in a presentation. Section 42.55(b)(6) does not limit the number of presenters who may contribute to a presentation.

Section 42.55(b)(7) delineates the requirements for unpaid service credit. Under § 42.55(b)(7)(i), occupational therapists may obtain 1 contact hour up to a maximum aggregate of 12 contact hours per biennium for every 5 hours of unpaid service, defined in § 42.52, as directly relating to occupational therapy. Even if part of the unpaid service, credit may not be awarded under § 42.55(b)(7)(i)(B) for the performance of administrative services. In addition to the documentation required under § 42.57(a) (relating to documentation and reporting of continued competency activities), upon audit, occupational therapists shall produce a letter from the organization’s president or executive director attesting to and outlining the unpaid service.

§ 42.56. Waivers of continued competency requirements

Proposed § 42.56 (relating to waivers of continued competency requirements) was divided into two categories: waiver and cure. Final-form subsection (b) directs an occupational therapist seeking a waiver due to serious illness, injury or emergency to provide documentation evidencing the condition requiring a waiver. IRRC questioned the type of documentation necessary. As accepted by other licensing boards within the Bureau, a letter from a physician specifying the illness, injury or emergency is acceptable documentary evidence. IRRC also asked the Board to specify the timeline for filing a waiver request and receiving a response. Final-form subsection (c) requires occupational therapists to file a waiver request 60 days before the end of the biennium, unless it is impracticable, so that the Board will have the opportunity to review and rule on the waiver requests. In the event that the request is denied, the occupational therapist will have sufficient time to complete the deficient hours before the end of the biennium.

IRRC questioned how the public would be protected under proposed § 42.56(b) if occupational therapists were able to avoid completing the activities by curing their deficiencies. It also asked whether any deficiency be cured and what kind of curing plan will be accepted. Upon further consideration, in this final-form rulemaking, the Board deleted proposed § 42.56(b).

§ 42.57. Documentation and reporting of continued competency activities

The HPLC recommended that the Board amend its reference to § 42.56 in § 42.57(a). The Board agrees with this recommendation and replaced the reference with a reference to § 42.55(b)(1)(iii), (2)(iv), (3)(ii), (4)(iii), (5)(ii) and (6)(iv).

IRRC recommended that the Board define professional continued competence portfolio as referenced in § 42.57(b)(1). As this term is defined in § 42.52, the Board added a cross-reference to the definition. IRRC questioned how completion of the hours will be verified. On the renewal form, occupational therapists will be required to verify compliance with the continued compe-

tency requirement. Upon audit, they will be required to submit copies of their professional continued competence portfolios.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a fiscal impact on the regulated community in that each licensed occupational therapist will incur the costs associated with completion of 24 contact hours of continued competency activities as a condition of biennial renewal. Due to the variety of ways an occupational therapist may obtain contact hours for continued competency purposes, it is impossible to derive an appropriate estimate as to costs for the regulated community. For instance, an occupational therapist could obtain contact hours through a mentoring relationship, professional writing and editing, fieldwork supervision, journal review or presentation. These activities would not necessarily impose an additional cost on the licensee. While some educational courses can be expensive, many others are extremely inexpensive and in some cases free. Nonetheless, the Board estimates an average cost of compliance with the continued competency requirements to be \$300 per licensee annually. In addition, the final-form rulemaking will create additional paperwork for the regulated community in that licensed occupational therapists would be required to retain documentation supporting the completion of the continued competency activities for 4 years and provide that documentation to the Board upon request.

The final-form rulemaking will also have a fiscal impact on the Board in that the Board will be required to expend resources reviewing Board-approved provider and individual activity applications. However, the Board anticipates that there will not be more than 30 applications to review in each category and those costs will be borne by the applicants through the \$40 application fee. In addition, the Board will incur costs and increased paperwork associated with audit and enforcement of the continued competency requirements.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, a sunset date has not been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 25, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 1909, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 24, 2013, the final-form rulemaking was approved by the HPLC. On May 15, 2013, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 16, 2013, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Judy Harner, Administrator, State Board of Occupational

Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 41 Pa.B. 1909.

(4) These amendments are necessary and appropriate for administering and enforcing the authorizing Acts identified in Part B of this preamble.

Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by adding §§ 42.51—42.58 and by amending § 42.17 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

KERRI HAMPLE,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3067 (June 1, 2013).)

Fiscal Note: Fiscal Note 16A-677 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

LICENSURE

§ 42.17. Fees.

(a) The fee schedule for licensure as an occupational therapist shall be as follows:

Application for license.....	\$30
Biennial renewal of license	\$55
Temporary license	\$20
Verification of licensure	\$15
Certification of license, scores or hours	\$25

(b) The fee schedule for licensure as an occupational therapy assistant shall be as follows:

Application for license.....	\$30
Biennial renewal of license	\$45
Temporary license	\$20
Verification of licensure	\$15
Certification of license, scores or hours	\$25

(c) The fee schedule for continued competency providers and courses shall be as follows:

Initial provider approval	\$40
Biennial renewal of provider approval.....	\$40
Individual activity approval	\$40

CONTINUED COMPETENCY

§ 42.51. Purpose.

The purpose of §§ 42.52—42.58 is to implement section 15(a) of the act (63 P. S. § 1515(a)), which authorizes the Board to establish additional requirements for licensure renewal to ensure continued competency to achieve the legislative purpose in section 2 of the act (63 P. S. § 1502) to ensure the highest degree of professional care and conduct on the part of occupational therapists.

§ 42.52. Definitions.

The following words and terms, when used in §§ 42.51 and 42.53—42.58, have the following meanings, unless the context clearly indicates otherwise:

Contact hour—A unit of measure for a continued competency activity that equals 50-60 minutes of participation.

Continued competency—The multidimensional process by which an occupational therapist demonstrates the development and maintenance of the knowledge, skills, attitudes, judgment, abilities and ethics necessary to practice occupational therapy in a variety of roles and settings.

Educational courses—Academic and continuing education courses delivered onsite or by distance education.

Level I fieldwork—Introductory fieldwork experiences that are a component of an educational program in occupational therapy in which students develop a basic understanding of the needs of clients through directed observation and supervised participation in the occupational therapy process.

Level II fieldwork—In-depth fieldwork experiences that are a component of an educational program in occupational therapy that provide multiple occupational therapy services to a variety of clients in multiple settings.

Mentor—A person who holds a current license, certificate or registration in a health-related or education field, or who is otherwise exempt by statute from the requirement to hold a license, certificate or registration, who is engaged in a one-on-one or group teaching/coaching relationship with an occupational therapist for the stated purpose of imparting specific knowledge and skills that will advance the occupational therapist's competency in occupational therapy.

Mentorship—Participation in a formalized, one-on-one or group teaching/learning relationship for the purposes of building an occupational therapist's capacity to practice occupational therapy.

Mentorship agreement—A written agreement between the mentor and the protégé or protégés that outlines specific goals and objectives and designates a plan of activities.

Professional continued competence portfolio—A document that evidences the occupational therapist's completion of the continued competency requirement in § 42.53 (relating to continued competency requirements).

Protégé—An occupational therapist who is engaged in a one-on-one or group relationship with a mentor for the stated purpose of acquiring specific skills and knowledge related to the practice of occupational therapy.

Unpaid service—Volunteering in an organization when the unpaid service directly relates to occupational therapy.

§ 42.53. Continued competency requirements.

(a) Beginning with the July 1, 2013—June 30, 2015, biennium, an occupational therapist shall complete a minimum of 24 contact hours in each biennial period in acceptable continued competency activities listed in § 42.55 (relating to acceptable continued competency activities) as a condition of licensure renewal.

(b) An occupational therapist is exempt from complying with subsection (a) for the first biennial renewal following initial licensure.

(c) An occupational therapist seeking to reactivate a lapsed or inactive license shall show compliance with the continued competency contact hour requirement during the 2-year period immediately preceding application for reactivation.

(d) As a condition of reinstatement, an occupational therapist whose license has been suspended or revoked shall complete the required continued competency contact hours for each licensure biennium in which the license was suspended or revoked.

§ 42.54. Education program providers.

(a) *General*. Educational courses offered by preapproved and Board-approved providers will be accepted as satisfying the continued competency requirement. It is the responsibility of the occupational therapist to ascertain the approval status of the provider before undertaking a course.

(b) *Rights reserved*. The Board reserves the right to reject a course if the content is outside of the scope described in § 42.55(a) (relating to acceptable continued competency activities).

(c) *Preapproved providers*. The Board has preapproved educational courses provided, coprovided or approved by the following entities:

- (1) A National, international or state-level occupational therapy association.
- (2) The American Occupational Therapy Association's Approved Provider Program.
- (3) American Society of Hand Therapists.
- (4) Association for Driver Rehabilitation Specialists.
- (5) Department of Education.
- (6) An accredited college or university or post-secondary vocational technical school or institution.
- (7) Federal or State government programs related to health care.

(8) A provider approved by another health licensing board within the Bureau of Professional and Occupational Affairs or another State licensure board.

(9) National and State professional health care organizations.

(10) National and State professional education organizations.

(11) National Alliance for the Mentally Ill.

(12) Case Management Society of America.

(d) *Board-approved providers.* The Board will consider for approval, on a biennial basis, providers of educational courses that comply with § 42.55(a) as follows:

(1) The provider seeking approval shall submit an application to the Board at least 60 days prior to the beginning of the course but no later than 90 days before the end of the biennial renewal period. The applicant will be notified of approval or disapproval in writing.

(2) The Board will not approve a provider unless it:

(i) Offers courses with specific learning objectives.

(ii) Has criteria for selecting and evaluating faculty instructors, subject matter and instructional materials.

(iii) Has a procedure for determining licensees' perceptions of the extent to which the objectives have been met.

(e) *Individual course approval.*

(1) An occupational therapist may request approval of contact hours for educational courses not otherwise approved by submitting an application for approval to the Board no later than 90 days before the end of the biennial renewal period that includes the following:

(i) The title of the course and number of contact hours.

(ii) The description of the course from the program catalog or brochure.

(iii) The learning objectives.

(iv) The name and qualifications of the presenter.

(v) An assessment of the course.

(2) Upon review of the completed application, the Board will notify the applicant whether the course has been approved or disapproved and, if approved, the number of contact hours that will be awarded.

(f) *Withdrawal of approval.* The Board may withdraw approval of a provider for cause. The provider will be notified in writing of the reasons for withdrawal of approval.

§ 42.55. Acceptable continued competency activities.

(a) Irrespective of the provider, contact hours will only be awarded for continued competency activities that are relevant to the practice of occupational therapy including direct care, management, education and research. Contact hours will not be awarded for activities related to marketing, office management, financial gain or self-promotion.

(b) The following activities are acceptable as long as the specific activity complies with subsection (a):

(1) Educational courses.

(i) For continuing education courses, contact hours equal the number of instructional hours.

(ii) For academic courses, one credit equals 15 contact hours.

(iii) Instead of the documentation required under § 42.57(a) (relating to documentation and reporting of continued competency activities), acceptable documentation of educational courses consists of an official transcript or certificate of completion indicating the name and date of the course and a description of the course from the school catalog or brochure.

(2) Mentorship.

(i) Prior to beginning a mentorship, the mentor and the protégé shall enter into a mentorship agreement.

(ii) At the conclusion of the mentorship, the mentor shall provide a postmentorship summary documenting the time spent in and outcomes of the mentoring program. A copy of the summary shall be provided to the protégé and maintained by the mentor and the protégé for 4 years.

(iii) The mentor and the protégé may each earn 1 contact hour for every 5 hours spent in mentorship activities up to a maximum aggregate of 12 contact hours per biennium.

(iv) Instead of the documentation required under § 42.57(a), acceptable documentation consists of a copy of the mentorship agreement and the postmentorship summary.

(3) Fieldwork supervision.

(i) An occupational therapist may earn:

(A) One contact hour per student, up to a maximum aggregate of 12 contact hours per biennium, for serving as a supervisor for level I fieldwork.

(B) Three contact hours per student, up to a maximum aggregate of 12 contact hours per biennium, for serving as a supervisor for level II fieldwork.

(ii) In addition to the information required under § 42.57(a), the educational program shall verify the name of the supervisor, the names and number of students being supervised, the locations where the fieldwork is being performed and the dates and level of fieldwork.

(4) Professional writing.

(i) An occupational therapist may earn the following contact hours, up to a maximum aggregate of 15 per biennium, for professional writing:

(A) Fifteen contact hours for writing a book.

(B) Ten contact hours for writing a chapter in a book.

(C) Ten contact hours for writing an article published in a peer-reviewed journal.

(D) Five contact hours for writing an article published in a non-peer-reviewed journal, magazine, newsletter or other publication.

(ii) Credit will be awarded for the biennium in which the book, chapter or article is published.

(iii) Instead of the documentation required under § 42.57(a), acceptable documentation of professional writing consists of a copy of the editor's or publisher's acceptance letter and a copy of the article, chapter or the cover page of the book including the title, author, source and date of publication, and editor.

(5) Editing.

(i) An occupational therapist may earn the following contact hours, up to a maximum aggregate of 15 per biennium, for editing:

(A) A maximum of 10 contact hours may be earned for editing a book relevant to occupational therapy.

(B) A maximum of 6 contact hours per biennium may be earned for serving as a reviewer for a professional journal, provided that only 1 contact hour may be accrued for each article reviewed.

(ii) Instead of the documentation required under § 42.57(a), acceptable documentation of editing activities consists of the following:

(A) For editing a book, a copy of the editor's or publisher's acceptance letter and the cover page of the book including the title, author, source and date of publication, and editor.

(B) For serving as a reviewer, a copy of a letter from the editor acknowledging the number of articles reviewed.

(6) Presentation and instruction.

(i) An occupational therapist may earn 2 contact hours, up to a maximum aggregate of 12 per biennium, for each 60-minute oral or poster presentation or instruction related to occupational therapy.

(ii) Credit will not be awarded for presentations or instruction when the activities are within the presenter's/instructor's employment role.

(iii) Credit will only be awarded one time per biennium for each presentation/instruction regardless of the number of times the material is presented.

(iv) In addition to the information required under § 42.57(a), the provider shall provide a copy of the official program, schedule or syllabus including presentation title, date, hours of presentation/instruction and attestation by the provider.

(7) Unpaid service.

(i) An occupational therapist may earn:

(A) One contact hour, up to a maximum aggregate of 12 contact hours per biennium, for every 5 hours of unpaid service.

(B) Credit will not be awarded for administrative services performed, even if part of the unpaid service.

(ii) In addition to the documentation required under § 42.57(a), acceptable documentation of unpaid service consists of a letter on organization letterhead from the president or executive director attesting to and outlining the unpaid service completed.

§ 42.56. Waivers of continued competency requirements.

(a) The Board may waive all or part of the continued competency activity requirements in the case of a serious

illness, injury or emergency which prevents a licensee from completing the continued competency requirements.

(b) An occupational therapist seeking a waiver shall submit a written request for a waiver and provide documentary evidence to the satisfaction of the Board of the serious illness, injury or emergency which would preclude the completion of the continued competency requirements.

(c) The request for a waiver shall be filed with the Board 60 days before the end of the biennium in which the contact hours are being accrued unless the occupational therapist proves to the satisfaction of the Board that it was impracticable to do so.

§ 42.57. Documentation and reporting of continued competency activities.

(a) A provider of a continued competency activity shall furnish to each participant documentation, signed by the provider, which includes the following, unless otherwise directed in § 42.55(b)(1)(iii), (2)(iv), (3)(ii), (4)(iii), (5)(ii) and (6)(iv) (relating to acceptable continued competency activities):

(1) The name of the participant, provider and instructor.

(2) The title, date and location of the activity.

(3) The number of contact hours awarded.

(b) An occupational therapist shall:

(1) Prepare a professional continued competence portfolio as defined in § 42.52 (relating to definitions) for each biennial period and retain it for 4 years following the last day of the biennial period during which the continued competency activities were completed.

(2) Verify completion of the required contact hours of continued competency activities when the license is renewed. An occupational therapist who has not completed the required hours of continued competency activities will not be eligible for renewal until the hours are completed, unless a waiver or extension has been granted.

(3) Provide a copy of the professional continued competence portfolio to the Board within 30 days of notification of an audit.

§ 42.58. Disciplinary action.

An occupational therapist who fails to comply with the continued competency activity requirements or the audit requirements or submits false documents in connection with the continued competency requirement will be subject to disciplinary action under section 16 of the act (63 P. S. § 1516).

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